

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 396 of 1997

in

SPECIAL CIVIL APPLICATION No. 2523 of 1997

For Approval and Signature:

Hon'ble MR. JUSTICE C.K. THAKKER

and

MR. JUSTICE S.D. PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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RUPSINH F PARMAR

Versus

STATE OF GUJARAT  
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Appearance:

MR JS YADAV for Petitioner

MS BR GAJJAR AGP for Respondent No. 1, 2, 3, 4  
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CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE S.D.PANDIT

Date of decision: 06/08/97

ORAL JUDGEMENT {Per : Thakkar, J.}

Admitted.

Ms. B.R Gajjar, learned AGP waives service of notice of admission on behalf of Respondents. In the facts and circumstances of the case, appeal is taken up for final hearing today.

This appeal is filed against an order passed by the learned Single Judge in Special Civil Application No. 2523 of 1997 summarily dismissing the petition on 31st March, 1997.

The appellant is the original petitioner. He challenged the Order of suspension passed by the District Superintendent of Police, District-Bharuch : Respondent No. 3 herein on March 5, 1996. The appellant was serving as a Dog Handler. He was holding the post of Armed First Grade Head Constable and was also working as Dog Handler in Bharuch District. On March 4, 1997 at 19.45 hours by a wireless message the appellant informed to Police Inspector, Dog Squad, Ahmedabad and Police Sub-Inspector, Dog Squad, Vadodara, that two dogs who were in charge of the appellant were seriously sick. On inquiry, it was found that both the dogs were healthy and that the appellant had misled the Department. An allegation was also made that the wireless message was prepared by the appellant in his own handwriting on which he illegally obtained signature of higher officer and by stating false and incorrect facts, he misled the officer. By such an act, he caused unnecessary expenses to government. There was gross negligence on the part of the appellant and committed misconduct. The appellant was, therefore, placed under suspension.

When the petition was placed for admission, the learned Single Judge was of the view that the action was preventive in nature and in the facts and circumstances of the case, no interference was called for. While dismissing the petition, the learned Single Judge;

"The impugned order of suspension is self explanatory. The dogs placed in charge of the petitioner which were alleged to be unwell were found to be healthy and active. The petitioner himself had sent a message under the name of Reader Police Sub Inspector and that he had misled the superior officer. The above misconduct referred to in the order of suspension would amount to that of fraud and forgery. Commission of such acts on the part of the

petitioners, if proved, should necessarily result into a major punishment. The petitioner, therefore, cannot be permitted to be on active duty pending inquiry into the misconduct alleged to have been committed by him."

After the notice was issued by the Division Bench, the respondents appeared. Since the petition was dismissed summarily, we asked the learned APP as to whether the respondent-authority wanted to file any affidavit. Pursuant to that an Affidavit-in-reply on behalf of Respondent No. 2 was filed by Ashish Bhatia, District Superintendent of Police, Bharuch. We have gone through the Affidavit. Mr. Yadav, learned counsel for the appellant submitted that the appellant has not committed any illegality or irregularity. He was incharge of dogs and according to him dogs were seriously sick and hence he prepared a wireless message, obtained signature of superior officer and sent it to the appropriate authority. According to Mr. Yadav, at the most, it can be said that there was over cautiousness on the part of the appellant in sending the message and/or obtaining signature of superior officer but it cannot be said that appellant petitioner had committed gross misconduct, which may result in major punishment being imposed on him. He submitted that it is settled law that suspension can be ordered in cases where the authority is satisfied that if the person is found guilty, it may result in one of the major punishments. He submitted that in the facts and circumstances of the case, no reasonable man could come to a conclusion that misconduct alleged to have been committed by the appellant would result in major punishment being imposed on him.

Ms. Gajjar, on the other hand, submitted that the learned Single Judge has considered all the facts while dismissing the petition and no ground has been made out by the appellant to interfere with the said order. She also drew our attention to Para-VIII of the Affidavit in which it is stated that the appellant had obtained signature of R.P.S.I and sent the message without obtaining sanction from District Police Officer.

In the facts and circumstances of the case, in our opinion, order of suspension was not called for. The appellant might have committed some irregularity for which an appropriate action can be taken against him, but prima facie Mr. Yadav is right in submitting that what weighed with the learned Single Judge was that there was "fraud and forgery" on the part of the appellant, and hence, suspension was called for. He submitted that it

is not even the allegation of respondent No. 3 either in order of suspension or in affidavit-in-reply that forgery was committed by the appellant. Looking to the order also, it appears that the appellant has "obtained" signature of superior officer. Thus, at the most, it could be said that the appellant had made some representation which resulted in unnecessary expenses being incurred. Without taking prior permission the appellant sent sending wireless message to superior officer. But it can not be said that forgery was committed by the appellant. If it is so, in our opinion, the action of suspension was not called for.

For the aforesaid reasons, the Letters Patent Appeal deserves to be allowed, and is accordingly allowed. The order of suspension is quashed and set-aside. We may clarify that we are not observing anything on merits of the matter, and as and when inquiry is held, it will be decided strictly on the basis of evidence before the authority. In the facts and circumstances of the case, no order as to costs.

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Prakash\*